



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2010-0929]

RIN 1625-AA01

Special Anchorage Regulations, Newport Bay Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

---

SUMMARY: The Coast Guard is expanding the boundaries of the special anchorage areas in Newport Bay Harbor, California, to encompass and replace temporary anchorage grounds C-1 and C-2, and anchorage ground C-3. This rule realigns anchorage boundaries to reflect the way the harbor currently is used.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2010-0929 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0929 in the

"Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Lucas Mancini, Coast Guard District Eleven, telephone 510-437-3801, e-mail [Lucas.W.Mancini@uscg.mil](mailto:Lucas.W.Mancini@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On December 16, 2011 we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations: Subpart A - Special Anchorage Regulations, Newport Bay Harbor, CA" in the Federal Register (76 FR 78185). We received no comments on the proposed rule. No request for public meeting was made.

##### Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This rule expands the designated special anchorage areas in Newport Bay Harbor, and removes other anchorage grounds, to align with the actual placement of existing mooring areas and reflect the way the harbor is currently used.

#### Background

Due to enhanced anchorage population over the years, the mooring areas being used in Newport Bay Harbor are nominally larger than the special anchorage areas originally charted in 33 CFR 110.95. As moorings were added or overhauled, the new moorings would fall outside the existing boundaries, resulting in moorings lying outside the charted areas. Similarly, the anchorage grounds designated in 33 CFR 110.212 were originally used as temporary overflow anchorages, but are now used regularly. Harbor users have been accustomed to this placement for the last 10 years.

The Mooring Master Plan Subcommittee of the City of

Newport Harbor Commission led an outreach campaign involving a series of public meetings about aligning the anchorage regulations with actual harbor use patterns, and we understand that it did not receive any opposition from the waterway users. After these public meetings, the City of Newport asked the Coast Guard to amend its anchorage regulations. The Coast Guard therefore solicited public comment on proposed changes in the NPRM mentioned above. We received no comment on the proposal.

#### Discussion of Changes

The Coast Guard is finalizing the proposal without changes and realigning the anchorage boundaries in order to reflect the way the harbor currently is used. This rule removes § 110.212 and the three anchorage grounds found therein (anchorages C-1, C-2, C-3). The area covered by those anchorages is incorporated into the special anchorage area regulations at § 110.95. Anchorage C-1 is incorporated into area B-1 under revised § 110.95(m), and anchorages C-2 and C-3 is incorporated into area A-11 under revised § 110.95(k). An image of the anchorage areas is available in the docket.

The enlargement of the special anchorage areas does not pose any waterway or navigational hazard, or restrict

harbor use in any way. The Army Corps of Engineers has been consulted and did not have any opposition. We anticipate that this rule would have no impact on fishing or boating because the amendment adjusts the lines to fit the current layout of moorings in Newport Harbor. Small craft are not restricted in the harbor. Berthing and anchoring in Newport Harbor also is regulated by Orange County ordinance and the City of Newport's municipal code. The enlargement of the special anchorages does not impact these laws; for the convenience of the reader we have included references pertaining to local municipal codes in the rule.

### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office

of Management and Budget has not reviewed it under that Order. The Coast Guard is realigning anchorage boundaries in order to reflect the way the harbor currently is used. The enlargement of the anchorages does not restrict harbor use in any way.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule may affect the following entities, some of which might be small entities: the owners or operators of commercial and recreational vessels intending to transit or anchor in the affected area.

(2) The impact to these entities will not, however, be significant since this area will encompass only a small

portion of the waterway and vessels can safely navigate around the anchored vessels.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-

3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule does not cause a taking of private property or otherwise have taking implications under Executive Order



12630, Governmental Actions and Interference with  
Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods;

sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An "Environmental Analysis Check List" and a categorical exclusion determination supporting this determination are available in the docket where indicated under ADDRESSES. This rule involves changing the size of special anchorage areas.

#### List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.95 to read as follows:

§ 110.95 Newport Bay Harbor, Calif.

(a) Area A-1. The entire water area within beginning at latitude 33°36'09.3" N., longitude 117°53'52.6" W.; thence to latitude 33°36'11.4" N., longitude 117°53'51.2" W.; thence to latitude 33°36'04.0" N., longitude 117°53'33.4" W.; thence to latitude 33°36'03.9" N., longitude 117°53'20.4" W.; thence to 33°36'01.1" N., longitude 117°53'09.9" W.; thence to 33°36'01.1" N., longitude 117°53'32.7" W.; thence to 33°36'03.9 N., longitude 117°53'41.9" W.; returning to latitude 33°36'09.3" N., longitude 117°53'52.6" W.

(b) Area A-2. The entire water area within beginning at latitude 33°36'12.9" N., longitude 117°53'44.2" W; thence to latitude 33°36'14.2" N., longitude 117°53'44.3" W.; thence to latitude 33°36'14.2" N., longitude 117°53'20.6" W.; thence to latitude 33°36'10.8" N.,

longitude 117°53'20.5 W.; thence to latitude 33°36'12.7" N., longitude 117°53'29.9" W.; thence to latitude 33°36'12.7" N., longitude 117°53'35.4" W.; thence to latitude 33°36'12.9" N., longitude 117°53'37.0" W.; returning to latitude 33°36'12.9" N., longitude 117°53'44.2" W.

(c) Area A-3. The entire water area within beginning at latitude 33°36'22.7" N., longitude 117 54'12.6" W.; thence to latitude 33°36'24.9" N., longitude 117°54'12.6" W.; thence to latitude 33°36'26.2" N., longitude 117°54'11.3" W.; thence to latitude 33°36'18.7" N., longitude 117°54'00.5" W.; thence to latitude 33°36'16.2" N., longitude 117°54'02.9" W.; returning to latitude 33°36'22.7" N., longitude 117 54'12.6" W.

(d) Area A-4. The entire water area within beginning at latitude 33°36' 32.7" N., longitude 117°53'56.6" W.; thence to latitude 33°36'33.6" N., longitude 117°53'56.6" W.; thence to latitude 33°36'33.5" N., longitude 117°53'26.2" W.; thence to latitude 33°36'32.9" N., longitude 117°53'26.2 W.; thence to latitude 33°36'32.6" N., longitude 117°53'33.8" W.; thence to latitude 33°36'32.4" N., longitude 117°53'36.7" W.; thence to latitude 33°36'31.7" N., longitude 117°53'40.9" W.; thence

to 33°36'31.7" N., longitude 117°53'46.3" W.; thence to latitude 33°36'32.6" N., longitude 117°53'50.9" W.; returning to latitude 33°36' 32.7" N., longitude 117°53'56.6" W.

(e) Area A-5. The entire water area within beginning at latitude 33°36'29.1" N., longitude 117°54'55.3" W.; thence to latitude 33°36'27.8" N., longitude 117°54'55.8" W.; thence to latitude 33°36'24.1" N., longitude 117°54' 41.8" W.; thence to latitude 33°36'26.7" N., longitude 117°54'40.8" W.; thence to latitude 33°36'26.7" N., longitude 117°54'46.3" W.; returning to latitude 33°36'29.1" N., longitude 117°54' 55.3" W.

(f) Area A-6. The entire water area within beginning at latitude 33°36'43.3" N., longitude 117°54'26.4" W.; thence to latitude 33°36'51.7" N., longitude 117°54'22.8" W.; thence to latitude 33°36'51.4" N., longitude 117°54'21.5" W.; thence to latitude 33°36'42.9" N., longitude 117°54'25.2" W.; returning to latitude 33°36'43.3" N., longitude 117°54'26.4" W.

(g) Area A-7. The entire water area within beginning at latitude 33°36'32.1" N., longitude 117°55'12.5" W.; thence to latitude 33°36'37.7" N., longitude 117°55'11.0" W.; thence to latitude 33°36'35.1" N., longitude

117°55'01.3" W.; thence to latitude 33°36'30.4" N.,  
longitude 117°55'02.6" W.; thence to latitude 33°36'31.2"  
N., longitude 117°55'06.7" W.; returning to latitude  
33°36'32.1" N., longitude 117°55'12.5" W.

(h) Area A-8. The entire water area within beginning  
at latitude 33°36'34.2" N.; longitude 117°55'27.3" W.;  
thence to latitude 33°36'36.2" N., longitude 117°55'26.7"  
W.; thence to latitude 33°36'39.5" N., longitude  
117°55'20.9" W.; thence to latitude 33°36'38.9" N.,  
longitude 117°55'15.4" W.; thence to latitude 33°36'37.9"  
N., longitude 117°55'11.7" W.; thence to latitude  
33°36'32.1" N., longitude 117°55'13.3" W.; returning to  
latitude 33°36'34.2" N.; longitude 117°55'27.3" W.

(i) Area A-9. The entire water area within beginning  
at latitude 33°36' 53.5" N., longitude 117°55' 28.2" W.;  
thence to latitude 33°36' 54.0" N., longitude 117°55' 27.0"  
W.; thence to latitude 33°36' 43.4" N., longitude 117°55'  
20.4" W.; thence to latitude 33°36' 42.9" N., longitude  
117°55' 21.6" W.; returning to latitude 33°36' 53.5" N.,  
longitude 117°55' 28.2" W.

(j) Area A-10. The entire water area within  
beginning at latitude 33°36'07.4" N., longitude  
117°53'19.2" W.; thence to latitude 33°36'14.2" N.,

longitude 117°53'19.4" W.; thence to latitude 33°36'14.2" N., longitude 117°53'06.9" W.; thence to latitude 33°36'08.1" N., longitude 117°53'04.9" W.; thence to latitude 33°36'06.5" N., longitude 117°53'08.9 " W.; thence to latitude 33°36'06.5" N., longitude 117°53'16.3" W.; returning to latitude 33°36'07.4" N., longitude 117°53'19.2" W.

(k) Area A-11. The entire water area within beginning at latitude 33°36'04.7" N., longitude 117°53'01.9" W.; thence to latitude 33°36'06.1" N., longitude 117°53'00.5" W.; thence to latitude 33°36'06.2" N., longitude 117°52'59.0" W.; thence to latitude 33°35'59.4" N., longitude 117°52'51.1" W.; thence to latitude 33°35'57.5" N., longitude 117°52'50.9" W.; thence to latitude 33°36'01.9" N., longitude 117°52'57.3" W.; thence to latitude 33°36'03.0" N., longitude 117°53'00.4" W.; returning to latitude 33°36'04.7" N., longitude 117°53'01.9" W.

(l) Area A-12. The entire water area within beginning at latitude 33°36'27.9" N., longitude 117°54'40.4" W.; thence to latitude 33°36'23.9" N., longitude 117°54'41.8" W.; thence to latitude 33°36'20.8" N., longitude 117°54'29.9" W.; thence to latitude



33°36'28.5" N., longitude 117°54'20.2" W.; returning to latitude 33°36'27.9" N., longitude 117°54'40.4" W.

(m) *Area B-1.* The entire water area within beginning at latitude 33°36'35.1" N., longitude 117°54'28.8" W.; thence to latitude 33°36'32.1" N., longitude 117°54'22.1" W.; thence to latitude 33°36'30.6"N., longitude 117°54'22.8" W; thence to latitude 33°36'30.5" N., longitude 117°54'30.9" W.; returning to latitude 33°36'35.1" N., longitude 117°54'28.8" W.

Note to § 110.95: These anchorage areas are reserved for recreational and other small craft. Local law, including the City of Newport Beach Municipal Code 17.25.020, may provide for fore and aft moorings for recreational and small craft of such size and alignment as permitted by the harbor master.

3. Remove § 110.212.

Dated: April 1, 2012

J. R. Castillo

Rear Admiral, U.S. Coast Guard

District Eleven Commander

[FR Doc. 2012-9006 Filed 04/13/2012 at 8:45 am; Publication  
Date: 04/16/2012]